

Amendment No. 1 to HB2741

Fowlkes
Signature of Sponsor

AMEND Senate Bill No. 2814

House Bill No. 2741*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section: §24-5-129.

(a) In a subrogation action brought in general sessions court by an automobile insurance carrier for recovery of amounts paid to or on behalf of its insured under the collision, comprehensive, medical payments or uninsured motorist coverages of a contract of automobile insurance, the affidavit of the plaintiff-carrier or its agent as to the total damages paid, or incurred, including the insured's deductible, is presumptive evidence against the alleged tortfeasor from whom recovery is sought, except as provided under subsection (b); provided that such affidavit is accompanied by a certificate of a notary public with seal annexed, or certificate of a judge of the court of general sessions, with the certificate of the county clerk that such judge is an acting judge within the county.

(b) The presumption afforded in subsection (a) shall not be conclusive to the extent that the alleged tortfeasor from whom recovery is sought denies tort liability for the incident, or denies the extent of the damages alleged to be related to the incident, or both. Any such denial must be under oath in writing, or made orally in open court, and the alleged tortfeasor shall be allowed to assert any defense or objection the defendant may have. Such affidavit shall be served upon the alleged tortfeasor with the civil warrant. Upon such denial, on the plaintiff-carrier's motion, or in the interest of justice, the judge shall continue the action to a date certain for trial.

(c) This section does not apply if the automobile insurance carrier files an intervening complaint in an existing action brought by an injured person against the alleged tortfeasor.

(d) This section does not affect the viability of the made-whole doctrine in Tennessee.

SECTION 2. This act shall take effect July 1, 2004, the public welfare requiring it, and shall apply to all causes of action arising on or after such date.